

MARTIN F. McDERMOTT  
Martin.mcdermott@usdoj.gov  
United States Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
4 Constitution Square  
150 M Street N.E., Suite 4.147  
Washington D.C. 20001  
Telephone (202) 514-4122

*Attorney for Defendant*

ROBERT UKEILEY, Admitted *Pro Hac Vice*  
Law Office of Robert Ukeiley  
255 Mountain Meadows Road  
Boulder, CO 80302  
Tel: (720) 496-8568  
Email: rukeiley@igc.org

[additional attorneys for Plaintiffs included in signature block]

*Attorneys for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

CENTER FOR BIOLOGICAL  
DIVERSITY and SIERRA CLUB,

Plaintiffs,

v.

MICHAEL S. REGAN, in his official  
capacity as the Administrator of the United  
States Environmental Protection Agency,

Defendant.

Case No. 4:24-cv-01900-HSG

**CONSENT DECREE**

1 WHEREAS, on March 28, 2024, Plaintiffs Center for Biological Diversity, and  
2 Sierra Club (collectively, “Plaintiffs”) filed the above-captioned matter asserting three  
3 Claims against Michael S. Regan, in his official capacity as the Administrator of the  
4 United States Environmental Protection Agency (hereinafter “EPA” or “Defendant”)  
5 (Dkt. 1);

6 WHEREAS, on May 11, 2024, Plaintiffs filed a first Amended Complaint (Dkt.  
7 17);

8 WHEREAS, Plaintiffs allege that EPA has failed to undertake certain non-  
9 discretionary duties under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q, and  
10 that such alleged failures (as described more fully hereinbelow) are actionable as  
11 breaches of such nondiscretionary duties under CAA section 304(a)(2), 42  
12 U.S.C. § 7604(a)(2);

13 WHEREAS, in their Prayer for Relief, Plaintiffs request that the Court (a) declare  
14 that the Administrator is in violation of the CAA with regard to his alleged failures to  
15 perform such nondiscretionary duties; (b) issue a mandatory injunction requiring the  
16 Administrator to perform such duties; (c) retain jurisdiction over this matter for purposes  
17 of enforcing and effectuating the Court’s order; and (d) grant Plaintiffs their reasonable  
18 costs of litigation;

19 WHEREAS, on April 28, 1971, pursuant to CAA section 109(a)(1), 42 U.S.C.  
20 § 7409(d)(1), the EPA Administrator signed a notice promulgating a rule establishing the  
21 primary National Ambient Air Quality Standards (“NAAQS”) for sulfur dioxide (the  
22 “1971 SO<sub>2</sub> NAAQS”), *Final Rule*, 36 Fed. Reg. 8,186 (Apr 30, 1971);

23 WHEREAS, on June 2, 2010, pursuant to CAA section 109(a)(1), 42 U.S.C.  
24 § 7409(d)(1), the EPA Administrator signed a notice promulgating a final rule revising  
25 the primary National Ambient Air Quality Standards for SO<sub>2</sub>, *Final Rule*, 75 Fed. Reg.  
26 35,520 (June 22, 2010) (the “2010 SO<sub>2</sub> NAAQS”);

27 WHEREAS, on July 25, 2013, pursuant to CAA section 107(d), 42 U.S.C. §  
28 7407(d), the EPA Administrator signed a notice promulgating a final rule to establish

1 initial air quality designations for the 2010 SO<sub>2</sub> NAAQS, *Final Rule*, 78 Fed. Reg. 47,191  
2 (Aug. 5, 2013) (the “initial 2010 SO<sub>2</sub> NAAQS designations”);

3 WHEREAS, the initial 2010 SO<sub>2</sub> NAAQS designations became effective on  
4 October 4, 2013, *id.* at 47,191;

5 WHEREAS, on June 30, 2016, pursuant to CAA section 107(d), 42 U.S.C. §  
6 7407(d), the EPA Administrator signed a notice promulgating a final rule to establish  
7 additional air quality designations for the 2010 SO<sub>2</sub> NAAQS, *Final Rule*, 81 Fed. Reg.  
8 45,039 (July 12, 2016) (the “Round 2 2010 SO<sub>2</sub> NAAQS designations”);

9 WHEREAS, the Round 2 2010 SO<sub>2</sub> NAAQS designations became effective on  
10 September 12, 2016, *id.* at 45,039;

11 WHEREAS, on November 29, 2016, pursuant to CAA section 107(d), 42 U.S.C.  
12 § 7407(d), the EPA Administrator signed a notice promulgating a final rule to establish  
13 additional air quality designations for the 2010 SO<sub>2</sub> NAAQS, *Final Rule*, 81 Fed. Reg.  
14 89,870 (Dec. 13, 2016) (the “Round 2 Supplemental 2010 SO<sub>2</sub> NAAQS designations”);

15 WHEREAS, the Round 2 Supplemental 2010 SO<sub>2</sub> NAAQS designations became  
16 effective on January 12, 2017, *id.* at 89,870;

17 WHEREAS, on December 21, 2017, pursuant to CAA section 107(d), 42 U.S.C.  
18 § 7407(d), the EPA Administrator signed a notice promulgating a final rule to establish  
19 additional air quality designations for the 2010 SO<sub>2</sub> NAAQS, *Final Rule*, 83 Fed. Reg.  
20 1098 (Jan. 9, 2018) (the “Round 3 2010 SO<sub>2</sub> NAAQS designations”);

21 WHEREAS, the Round 3 2010 SO<sub>2</sub> NAAQS designations became effective on  
22 April 9, 2018, *id.* at 1098;

23 WHEREAS, on December 21, 2020, pursuant to CAA section 107(d), 42 U.S.C. §  
24 7407(d), the EPA Administrator signed a notice promulgating a final rule to establish  
25 additional air quality designations for the 2010 SO<sub>2</sub> NAAQS, *Final Rule*, 86 Fed. Reg.  
26 16,055 (Mar. 26, 2021) (the “Round 4 2010 SO<sub>2</sub> NAAQS designations”);

27 WHEREAS, the Round 4 2010 SO<sub>2</sub> NAAQS designations became effective on  
28 April 30, 2021, *id.* at 16,055;

1 WHEREAS, Plaintiffs allege that in response to the 2010 SO<sub>2</sub> NAAQS, EPA  
2 designated the following areas as “nonattainment” in that the outdoor air quality in these  
3 areas violates the SO<sub>2</sub> standard: Hayden, AZ; Miami, AZ; Giles County (part), VA;  
4 Huntington, IN; Evangeline Parish (part), LA; Piti-Cabras, Guam; Guayama-Salinas, PR;  
5 San Juan, PR; Alton Township, IL; Anne Arundel County and Baltimore County (part),  
6 MD (Baltimore); St. Clair, MI; Freestone and Anderson Counties (part), TX; Rusk and  
7 Panola Counties (part), TX; and Titus County (part), TX;

8 WHEREAS, Plaintiffs allege that pursuant to CAA section 191(a), 42 U.S.C. §  
9 7514(a), States that contain areas that are designated nonattainment after November 15,  
10 1990, are required to provide State Implementation Plan (“SIP”) submissions to EPA  
11 within 18 months of the effective date of designations, *i.e.* by April 4, 2015 for the initial  
12 2010 SO<sub>2</sub> NAAQS designations; by March 12, 2018 for the Round 2 2010 SO<sub>2</sub> NAAQS  
13 designations; by July 12, 2018 for the Round 2 Supplemental 2010 SO<sub>2</sub> NAAQS  
14 designations; by October 9, 2019 for the Round 3 2010 SO<sub>2</sub> NAAQS designations; and  
15 by October 31, 2022 for the Round 4 SO<sub>2</sub> NAAQS designations;

16 WHEREAS, Plaintiffs allege that pursuant to CAA section 110(k)(1)(B), 42  
17 U.S.C. § 7410(k)(1)(B), EPA must then determine whether a State’s submittal is  
18 complete within six months after EPA receives the submission, and if EPA does not  
19 determine completeness of the plan or revision within six (6) months, then the submittal  
20 is deemed complete by operation of law after six (6) months;

21 WHEREAS, Plaintiffs allege that pursuant to CAA section 110(k)(1)(B),  
22 42 U.S.C. § 7410(k)(1)(B), if a State does not submit a SIP at all or if EPA determines a  
23 submitted SIP to be incomplete, then six (6) months after the SIP was due EPA is  
24 required to determine that the State failed to submit the SIP;

25 WHEREAS, Plaintiffs allege that if EPA determines that a State fails to submit a  
26 SIP, this triggers a requirement pursuant to CAA section 110(c)(1)(A), 42 U.S.C. §  
27 7410(c)(1)(A), that EPA promulgate a federal implementation plan (“FIP”) for the State  
28 within two (2) years of the determination;

1 WHEREAS, Plaintiffs allege that pursuant to CAA section 110(k)(2)-(4), 42  
2 U.S.C. § 7410(k)(2)-(4), EPA is required to approve in whole or in part, disapprove, or  
3 conditionally approve in whole or in part, each submitted complete plan or revision,  
4 within 12 months of a determination of completeness by EPA or a submittal deemed by  
5 operation of law to be complete;

6 WHEREAS, Plaintiffs allege that pursuant to CAA section 179(c), 42 U.S.C. §  
7 7509(c), EPA is required within six (6) months following a designated nonattainment  
8 area's deadline for attaining a NAAQS to determine whether the area attained the  
9 standard by that date, and then to publish notice in the Federal Register of that  
10 determination;

11 WHEREAS, Plaintiffs allege that if EPA determines that an area did not attain the  
12 NAAQS by its attainment deadline, this triggers a requirement pursuant to CAA section  
13 179(d)(1), 42 U.S.C. § 7509(d)(1), that the State submit a revised SIP;

14 WHEREAS, in Claim 1, Plaintiffs allege that on January 31, 2022, EPA found  
15 that the Miami, Arizona sulfur dioxide nonattainment area failed to attain the 2010  
16 primary 1-hour SO<sub>2</sub> NAAQS by their attainment date of October 4, 2018, 87 Fed. Reg.  
17 4,805 (Jan. 31, 2022), and that this triggered an obligation for Arizona to submit a SIP  
18 revision by January 31, 2023, pursuant to CAA Section 179(d). Plaintiffs further allege  
19 that although it has been more than six (6) months since January 31, 2023, Arizona has  
20 not submitted this SIP revision. Plaintiffs further allege that notwithstanding the  
21 foregoing, EPA has not made a finding of Arizona's failure to submit. Therefore,  
22 Plaintiffs allege, EPA is in violation of its nondiscretionary duty to make a finding of  
23 Arizona's failure to submit a "post-failure to attain" SIP revision for the Miami, Arizona  
24 area, including the emission inventory, attainment demonstration, contingency measures,  
25 NNSR, RACM/RACT, and RFP elements;

26 WHEREAS, in Claim 1, Plaintiffs also allege that EPA's "Round 4" of  
27 nonattainment designations, 86 Fed. Reg. 16,055 (Mar. 26, 2021), required States with  
28 nonattainment areas to submit nonattainment areas SIPs within 18 months of the effective

1 date of the nonattainment designation, *i.e.*, by no later than October 31, 2022. 86 Fed.  
2 Reg. at 16,057. Plaintiffs further allege that in Round 4, EPA designated Giles County  
3 (part), Virginia as nonattainment. Plaintiffs further allege that although it has been more  
4 than six months since October 31, 2022, Virginia has not submitted any of the SIP  
5 elements except the attainment demonstration. Plaintiffs further allege that  
6 notwithstanding the foregoing, EPA has not made a finding of Virginia's failure to  
7 submit. Therefore, Plaintiffs allege, EPA is in violation of its nondiscretionary duty to  
8 make a finding of failure to submit SIP elements for Virginia including the emission  
9 inventory, contingency measures, NNSR, RACM/RACT, and RFP elements;

10 WHEREAS, on August 16, 2024, EPA published a final action determining that  
11 Arizona and Virginia, among other States, had failed to submit the required SIPs for the  
12 Miami and Giles County nonattainment areas, respectively, and that this final action  
13 became effective on September 16, 2024, 89 Fed. Reg. 66,603, such that Claim 1 is now  
14 moot;

15 WHEREAS, in Claim 2, Plaintiffs allege that on March 18, 2016, effective April  
16 18, 2016, EPA published a finding that Arizona had failed to submit the required SO<sub>2</sub>  
17 nonattainment plan for the Hayden, Arizona nonattainment area by the submittal  
18 deadline. *See* 81 Fed. Reg. 14,736, 14,738 (Mar. 18, 2016). Plaintiffs allege that this  
19 finding triggered a CAA requirement that EPA promulgate a Federal Implementation  
20 Plan ("FIP") within two (2) years of the finding unless, before promulgating the FIP (a)  
21 the State had made the necessary complete submittal and (b) EPA had approved the  
22 submittal as meeting applicable requirements. 42 U.S.C. § 7410(c)(1). Plaintiffs allege  
23 that as a result of the foregoing, EPA was required to promulgate a FIP for the Hayden  
24 Arizona SO<sub>2</sub> nonattainment area by no later than April 18, 2018 for the attainment  
25 demonstration, contingency measures, enforceable emissions limitations and controls,  
26 RACM/RACT, and RFP elements, but EPA has not promulgated a FIP for the Hayden,  
27 Arizona SO<sub>2</sub> nonattainment area for the attainment demonstration, contingency measures,  
28 enforceable emissions limitations and controls, RACM/RACT, and RFP elements.



1 Although on October 3, 2023, Arizona submitted a SIP, which EPA determined to be  
2 complete on May 2, 2024, EPA has not approved the submittal as meeting applicable  
3 requirements. Based on the foregoing, Plaintiffs allege that EPA is in violation of its  
4 nondiscretionary duty to promulgate a FIP for the Hayden SO<sub>2</sub> nonattainment area;

5 WHEREAS, in Claim 2, Plaintiffs also allege that on November 3, 2020, effective  
6 December 3, 2020, EPA published a finding that Indiana, Louisiana, Guam, and Puerto  
7 Rico had failed to submit the required SO<sub>2</sub> nonattainment plans for the Huntington,  
8 Evangeline Parish, Piti-Cabras, Guayama-Salinas, and San Juan nonattainment areas by  
9 the submittal deadline. 85 Fed. Reg. 69,504, 69,506 (Nov. 3. 2020). Plaintiffs allege this  
10 finding triggered a requirement that EPA promulgate FIPs within two (2) years of the  
11 finding unless, before promulgating the FIP (a) the State had made the necessary  
12 complete submittal and (b) EPA had approved the submittal as meeting applicable  
13 requirements. 42 U.S.C. § 7410(c)(1). Plaintiffs allege that based on the foregoing, EPA  
14 was required to promulgate FIPs for the Huntington, Evangeline Parish, Piti-Cabras,  
15 Guayama-Salinas, and San Juan SO<sub>2</sub> nonattainment areas by no later than December 3,  
16 2022 for the emissions inventory, attainment demonstration, contingency measures,  
17 enforceable emissions limitations and controls, RACM/RACT, NNSR, and RFP  
18 elements. Plaintiffs further allege that notwithstanding the foregoing, EPA has not  
19 promulgated FIPs for the Huntington, Evangeline Parish, Piti-Cabras, Guayama-Salinas,  
20 and San Juan SO<sub>2</sub> nonattainment areas for the emissions inventory, attainment  
21 demonstration, contingency measures, enforceable emissions limitations and controls,  
22 RACM/RACT, NNSR, and RFP elements. Further, Plaintiffs allege that none of these  
23 States or Territories has made the necessary complete submittal, and that EPA has not  
24 approved such submittal as meeting applicable CAA requirements. Therefore, Plaintiffs  
25 allege, EPA has failed to promulgate the necessary FIPs for the Huntington, Evangeline  
26 Parish, Piti-Cabras, Guayama-Salinas, and San Juan SO<sub>2</sub> nonattainment areas;

27 WHEREAS, in Claim 3, Plaintiffs allege that no later than 6 months after the  
28 attainment date for a nonattainment area, EPA has a nondiscretionary duty to determine

1 whether an area has attained the NAAQS and publish a notice in the Federal Register of  
2 that determination. 42 U.S.C. § 7509(c). Plaintiffs further allege that the six areas listed  
3 in Table 1 (Paragraph 51 of the First Amended Complaint) – Alton Township, IL; Anne  
4 Arundel County and Baltimore County, MD; St. Clair, MI; Freestone and Anderson  
5 Counties, TX; Rusk and Panola Counties, TX; and Titus County, TX – have been  
6 designated by EPA as nonattainment for the 2010 SO<sub>2</sub> NAAQS effective no later than  
7 January 12, 2017. 81 Fed. Reg. 45,039 (July 12, 2016); 81 Fed. Reg. 89,870 (Dec. 13,  
8 2016). Therefore, Plaintiffs allege, these areas had an attainment date of no later than  
9 January 12, 2022. 42 U.S.C. § 7514a(a). Plaintiffs allege that based on the foregoing,  
10 EPA had a nondiscretionary duty to determine whether these areas attained by the  
11 attainment date and to publish notice of such finding by no later than July 12, 2022. 42  
12 U.S.C. § 7509(c). Plaintiffs allege that EPA has not determined whether these six areas  
13 attained by the attainment date and published notice of such finding for the six areas.  
14 Therefore, Plaintiffs allege, EPA is in violation of its nondiscretionary duty to determine  
15 whether these six areas attained by their attainment date and to publish notice of such a  
16 finding;

17 WHEREAS, in Claim 3, Plaintiffs also allege that the five areas listed in Table 2  
18 (Paragraph 53 of the First Amended Complaint) – Huntington, IN; Evangeline Parish  
19 (Partial), LA; Piti-Cabras, Guam; San Juan, PR; and Guayama-Salinas, PR – were  
20 designated by EPA as nonattainment for the 2010 SO<sub>2</sub> NAAQS effective no later than  
21 April 9, 2018. 83 Fed. Reg. 1,098 (Jan. 9, 2018), and that, therefore, these areas had an  
22 attainment date of no later than April 9, 2023. 42 U.S.C. § 7514a(a). Based on the  
23 foregoing, Plaintiffs allege that EPA had a nondiscretionary duty to determine whether  
24 these areas attained by the attainment date and publish notice of such finding by no later  
25 than October 9, 2023. 42 U.S.C. § 7509(c). Plaintiffs allege that EPA has not determined  
26 whether these five areas attained by the attainment date and published notice of such  
27 finding for these five areas. Therefore, Plaintiffs allege, EPA is in violation of its  
28



1 nondiscretionary duty to determine whether these five areas attained by their attainment  
2 date and to publish notice of such a finding;

3 WHEREAS, Plaintiffs and EPA consider this Consent Decree to be an adequate  
4 and equitable resolution of both of the remaining Claims in Plaintiffs' Complaint and  
5 therefore wish to effectuate this settlement;

6 WHEREAS, it is in the interest of the public, Plaintiffs, EPA, and judicial  
7 economy to resolve this matter without protracted litigation;

8 WHEREAS, the parties agree that no party to this Consent Decree will challenge  
9 the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this  
10 Consent Decree;

11 WHEREAS, Plaintiffs provided timely prior written notice of their intent to bring  
12 this suit, and more than 60 days have passed since Plaintiffs provided such written notice  
13 to EPA;

14 WHEREAS, the parties agree that this Court has jurisdiction over the matters  
15 resolved in this Consent Decree pursuant to the citizen suit provision in CAA section  
16 304(a)(2), 42 U.S.C. § 7604(a)(2), and that venue is proper in the Northern District of  
17 California pursuant to 28 U.S.C. § 1391(e) and Civil L.R. 3-2(c)-(d); and

18 WHEREAS, the Court, by entering this Consent Decree, finds that the Consent  
19 Decree is fair, reasonable, in the public interest, and consistent with the CAA;

20 NOW THEREFORE, before the taking of testimony, without trial or  
21 determination of any issue of fact or law, and upon the consent of Plaintiffs and  
22 Defendant EPA, it is hereby ORDERED, adjudged and decreed that:

23 **OBLIGATIONS**

24 1. The appropriate EPA official shall:

25 a. On or before August 29, 2025, sign a notice of final rulemaking  
26 promulgating under CAA section 110(c), 42 U.S.C. § 7410(c), a FIP containing the  
27 emissions inventory, attainment demonstration, contingency measures, enforceable  
28

1 emissions limitations and controls, RACM/RACT, NNSR, and RFP elements for the  
2 Huntington, Indiana SO<sub>2</sub> nonattainment area;

3           b. On or before August 28, 2026, sign a notice of final rulemaking  
4 promulgating under CAA section 110(c), 42 U.S.C. § 7410(c), a FIP containing the  
5 attainment demonstration, contingency measures, enforceable emissions limitations and  
6 controls, RACM/RACT, and RFP elements for the Hayden, Arizona SO<sub>2</sub> nonattainment  
7 area;

8           c. On or before September 30, 2025, sign a notice of proposed rulemaking  
9 proposing under CAA section 110(c), 42 U.S.C. § 7410(c), a FIP containing the  
10 emissions inventory, attainment demonstration, contingency measures, enforceable  
11 emissions limitations and controls, RACM/RACT, NNSR, and RFP elements for the Piti-  
12 Cabras, Guam SO<sub>2</sub> nonattainment area, and sign a notice of proposed rulemaking  
13 proposing under CAA section 110(c), 42 U.S.C. § 7410(c), a FIP containing the  
14 emissions inventory, attainment demonstration, contingency measures, enforceable  
15 emissions limitations and controls, RACM/RACT, NNSR, and RFP elements for the  
16 Evangeline Parish, Louisiana SO<sub>2</sub> nonattainment area;

17           d. On or before March 31, 2026, sign a notice of final rulemaking  
18 promulgating under CAA section 110(c), 42 U.S.C. § 7410(c), a FIP containing the  
19 emissions inventory, attainment demonstration, contingency measures, enforceable  
20 emissions limitations and controls, RACM/RACT, NNSR, and RFP elements for the Piti-  
21 Cabras, Guam SO<sub>2</sub> nonattainment area, and sign a notice of final rulemaking  
22 promulgating under CAA section 110(c), 42 U.S.C. § 7410(c), a FIP containing the  
23 emissions inventory, attainment demonstration, contingency measures, enforceable  
24 emissions limitations and controls, RACM/RACT, NNSR, and RFP elements for the  
25 Evangeline Parish, Louisiana SO<sub>2</sub> nonattainment area;

26           e. On or before January 14, 2027, sign a notice of proposed rulemaking  
27 proposing under CAA section 110(c), 42 U.S.C. § 7410(c), a FIP containing the  
28 emissions inventory, attainment demonstration, contingency measures, enforceable

1 emissions limitations and controls, RACM/RACT, NNSR, and RFP elements for the  
2 Guayama-Salinas, Puerto Rico SO<sub>2</sub> nonattainment area, and sign a notice of proposed  
3 rulemaking proposing under CAA section 110(c), 42 U.S.C. § 7410(c), a FIP containing  
4 the emissions inventory, attainment demonstration, contingency measures, enforceable  
5 emissions limitations and controls, RACM/RACT, NNSR, and RFP elements for the San  
6 Juan, Puerto Rico SO<sub>2</sub> nonattainment area;

7           f. On or before June 1, 2027, sign a notice of final rulemaking  
8 promulgating under CAA section 110(c), 42 U.S.C. § 7410(c), a FIP containing the  
9 emissions inventory, attainment demonstration, contingency measures, enforceable  
10 emissions limitations and controls, RACM/RACT, NNSR, and RFP elements for the  
11 Guayama-Salinas, Puerto Rico SO<sub>2</sub> nonattainment area, and sign a notice of final  
12 rulemaking promulgating under CAA section 110(c), 42 U.S.C. § 7410(c), a FIP  
13 containing the emissions inventory, attainment demonstration, contingency measures,  
14 enforceable emissions limitations and controls, RACM/RACT, NNSR, and RFP elements  
15 for the San Juan, Puerto Rico SO<sub>2</sub> nonattainment area;

16           g. On or before December 19, 2024, sign a notice (or separate notices)  
17 determining, under CAA section 179(c), 42 U.S.C. § 7509(c), whether the Anne-  
18 Arundel/Baltimore Counties, Maryland SO<sub>2</sub> nonattainment area, Alton Township, Illinois  
19 SO<sub>2</sub> nonattainment area, St. Clair, Michigan SO<sub>2</sub> nonattainment area, Freestone-  
20 Anderson, Texas SO<sub>2</sub> nonattainment area, Rusk-Panola County, Texas SO<sub>2</sub>  
21 nonattainment area, Titus, Texas SO<sub>2</sub> nonattainment area, Evangeline Parish, Louisiana  
22 SO<sub>2</sub> nonattainment area, and Piti-Cabras, Guam SO<sub>2</sub> nonattainment area attained the  
23 2010 SO<sub>2</sub> NAAQS by their applicable attainment date;

24           h. On or before August 29, 2025, sign a notice determining, under CAA  
25 section 179(c), 42 U.S.C. § 7509(c), whether the Huntington, Indiana SO<sub>2</sub> nonattainment  
26 area attained the 2010 SO<sub>2</sub> NAAQS by its attainment date; and

27           i. On or before November 1, 2027, sign a notice (or separate notices)  
28 determining, under CAA section 179(c), 42 U.S.C. § 7509(c), whether the Guayama-

1 Salinas, Puerto Rico SO<sub>2</sub> nonattainment area and the San Juan, Puerto Rico SO<sub>2</sub>  
2 nonattainment area attained the 2010 SO<sub>2</sub> NAAQS by their attainment date.

3 2. If for any area listed above in Paragraph 1.a-f EPA issues a clean data  
4 determination, then EPA's obligation to promulgate a FIP addressing the attainment  
5 demonstration, contingency measures, enforceable emission limitations and controls,  
6 RACM/RACT, and RFP elements for that area is automatically terminated but without  
7 prejudice for Plaintiffs to enforce EPA's obligation should the clean data determination  
8 later be revoked. If for any area listed above in Paragraph 1.a-f EPA, pursuant to CAA  
9 section 110(k), 42 U.S.C. § 7410, fully approves or conditionally approves a SIP meeting  
10 applicable requirements, then EPA's obligation to take the action required by Paragraph  
11 1a-f for that area is automatically terminated for the approved applicable requirements. If  
12 for any area listed in Paragraph 1.a-i EPA, pursuant to CAA section 107(d)(3), 42 U.S.C.  
13 § 7407(d)(3), redesignates the area as attainment, then EPA's obligation to take the action  
14 required by Paragraph 1.a-i for that area is automatically terminated.

15 3. EPA shall within fifteen (15) business days of signature of each action set  
16 forth in Paragraph 1, send the package for the action to the Office of the Federal Register  
17 for review and publication in the *Federal Register*.

#### 18 **RESOLUTION OF THE CONSENT DECREE**

19 4. After EPA has completed the actions set forth in Paragraph 1 of this Consent  
20 Decree (or EPA's obligations under Paragraph 1 have been terminated pursuant to  
21 Paragraph 2), after notice of each final action required by Paragraph 1 has been published  
22 in the *Federal Register*, and after the issue of costs of litigation (including reasonable  
23 attorney fees) has been resolved, EPA may move to have this Consent Decree terminated  
24 and the above-captioned matter shall be dismissed with prejudice except as noted in the  
25 first sentence of Paragraph 2 above. Plaintiffs shall have fourteen (14) days in which to  
26 respond to such motion, unless the parties stipulate to a longer time for Plaintiffs to  
27 respond.  
28

1           5. The Court shall retain jurisdiction over this matter to enforce the terms of this  
2 Consent Decree.

3                           **EXTENSIONS AND TOLLING OF DEADLINES**

4           6. The deadlines established by this Consent Decree may be extended (a) by  
5 written stipulation of Plaintiffs and EPA with notice to the Court, or (b) by the Court  
6 upon motion of EPA for good cause shown pursuant to the Federal Rules of Civil  
7 Procedure and upon consideration of any response by Plaintiffs and any reply by EPA.  
8 Any other provision of this Consent Decree also may be modified by the Court following  
9 motion of an undersigned party for good cause shown pursuant to the Federal Rules of  
10 Civil Procedure and upon consideration of any response by a non-moving party and any  
11 reply thereto.

12           7. If a lapse in EPA appropriations occurs within 120 days prior to a deadline in  
13 Paragraph 1 in this Decree, that deadline shall be extended automatically one day for  
14 each day of the lapse in appropriations. Nothing in this Paragraph shall preclude EPA  
15 from seeking an additional extension of time through modification of this Consent Decree  
16 pursuant to Paragraph 6.

17                           **COMPLETE RESOLUTION**

18           8. Plaintiffs and EPA agree that this Consent Decree constitutes a complete  
19 settlement of Claims 2 and 3 as described in Paragraph 1 hereof and in Plaintiffs'  
20 Complaint.

21                           **DISPUTE RESOLUTION**

22           9. In the event of a dispute between Plaintiffs and EPA concerning the  
23 interpretation or implementation of any aspect of this Consent Decree, the disputing party  
24 shall provide the other party with a written notice, via electronic mail or other means,  
25 outlining the nature of the dispute and requesting informal negotiations. These parties  
26 shall meet and confer in order to attempt to resolve the dispute. If these parties are  
27 unable to resolve the dispute within ten (10) business days after receipt of the notice,  
28 either party may petition the Court to resolve the dispute.

10. No motion or other proceeding seeking to enforce this Consent Decree or for contempt of Court shall be properly filed unless the procedure set forth in Paragraph 9 has been followed, and the moving party has provided the other party with written notice received at least ten (10) business days before the filing of such motion or proceeding.

#### **COSTS OF LITIGATION**

11. The deadline for filing a motion for costs of litigation (including attorney fees) for activities performed prior to entry of the Consent Decree is hereby extended until ninety (90) days after this Consent Decree is entered by the Court. During this period, the Parties shall seek to resolve any claim for costs of litigation (including attorney fees), and if they cannot, Plaintiffs may file a motion for costs of litigation (including attorney fees) or a stipulation or motion to extend the deadline to file such a motion. EPA reserves the right to oppose any such request.

12. Plaintiffs reserve the right to seek additional costs of litigation (including reasonable attorney fees) incurred subsequent to entry of this Consent Decree. EPA reserves the right to oppose any such request for additional costs of litigation (including attorney fees).

13. This Court shall retain jurisdiction over this matter to consider any requests for costs of litigation (including attorney fees).

#### **DISCLAIMERS RE: JURISDICTION, DISCRETION, AND ADMISSIONS**

14. Nothing in this Consent Decree shall be construed (a) to confer upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1), including final action taken pursuant to sections 110(c), 110(k), 179(c) or 107(d)(3) of the CAA, 42 U.S.C. §§ 7410(c), 7410(k), 7509(c) or 7407(d)(3), or (b) to waive any claims, remedies, or defenses that the parties may have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

15. Nothing in this Consent Decree shall be construed to limit or modify any discretion accorded EPA by the CAA or by general principles of administrative law in



1 taking the actions which are the subject of this Consent Decree, including the discretion  
2 to alter, amend, or revise any final actions promulgated pursuant to this Consent Decree.  
3 EPA's obligation to perform each action specified in this Consent Decree does not  
4 constitute a limitation or modification of EPA's discretion within the meaning of this  
5 paragraph.

6 16. Except as expressly provided herein, nothing in this Consent Decree shall be  
7 construed as an admission of any issue of fact or law nor to waive or limit any claim,  
8 remedy, or defense, on any grounds, related to any final action EPA takes with respect to  
9 the actions addressed in this Consent Decree.

#### 10 **DRAFTING AND QUESTIONS OF INTERPRETATION**

11 17. It is expressly understood and agreed that this Consent Decree was jointly  
12 drafted by Plaintiffs and EPA. Accordingly, the parties hereby agree that any and all  
13 rules of construction to the effect that ambiguity is construed against the drafting party  
14 shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of  
15 this Consent Decree.

#### 16 **NOTICE AND COMMENT**

17 18. The parties agree and acknowledge that before this Consent Decree can be  
18 finalized and entered by the Court, EPA must provide notice of this Consent Decree in  
19 the *Federal Register* and an opportunity for public comment pursuant to CAA section  
20 113(g), 42 U.S.C. § 7413(g). After this Consent Decree has undergone notice and  
21 comment, the Administrator and/or the Attorney General, as appropriate, shall promptly  
22 consider any written comments in determining whether to withdraw or withhold their  
23 consent to the Consent Decree, in accordance with CAA section 113(g). If the  
24 Administrator and/or the Attorney General do not elect to withdraw or withhold consent,  
25 EPA shall promptly file a motion that requests that the Court enter this Consent Decree.

#### 26 **NOTICES**

27 19. Any notices required or provided for by this Consent Decree shall be in  
28 writing, via electronic mail or other means, and sent to the following (or to any new

1 address of counsel as filed and listed in the docket of the above-captioned matter, at a  
2 future date):

3 For Plaintiffs Center for Biological Diversity and Sierra Club:

4 Robert Ukeiley

5 Law Office of Robert Ukeiley  
6 255 Mountain Meadows Road  
7 Boulder, CO 80302  
8 Tel: (720) 496-8568  
9 Email: [rukeiley@igc.org](mailto:rukeiley@igc.org)

10 and

11 Ryan Maher  
12 Center for Biological Diversity  
13 411 K St. NW, Suite 1300  
14 Washington, DC 20002  
15 781-325-6303  
16 [rmaher@biologicaldiversity.org](mailto:rmaher@biologicaldiversity.org)

17 For Defendant EPA:

18 Martin F. McDermott  
19 U.S. Department of Justice  
20 Environment & Natural Resources Division  
21 Environmental Defense Section  
22 4 Constitution Square  
23 150 M Street N.E., Suite 4.147  
24 Washington D.C. 20001  
25 Tel. (202) 514-4122  
26 Email: [martin.mcdermott@usdoj.gov](mailto:martin.mcdermott@usdoj.gov)

27 **APPROPRIATED FUNDS**

28 20. EPA and Plaintiffs recognize and acknowledge that the obligations imposed upon EPA under this Consent Decree can only be undertaken using appropriated funds legally available for such purpose. No provision of this Consent Decree shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

**FINAL CLAUSES REGARDING APPROVAL/DISAPPROVAL EFFECT  
ON THE PARTIES, NOTICE AND CERTIFICATION**

21. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the terms of the proposed Consent Decree may not be used as evidence in any litigation between the parties.

22. This Consent Decree applies to, is binding upon, and inures to the benefit of the parties and any successors, assigns and/or designates. This Consent Decree shall not be construed to create any rights in or grant any cause of action to any third party that is not a party to this Consent Decree.

23. The undersigned representatives of Plaintiffs and Defendant EPA certify that they are fully authorized by the party they represent to consent to the Court's entry of the terms and conditions of this Consent Decree.

IT IS SO ORDERED on this 17th day of December, 2024.

  
THE HONORABLE HAYWOOD S. GILLIAM, JR.  
UNITED STATES DISTRICT JUDGE